

Serial No. 10/027,741
Attorney Docket No. RPC 0579 PUS**REMARKS**

Claims 1-23 and 27-33 are pending. Claims 5 and 6 are allowed and the Examiner has indicated that claims 18 and 19 would be allowed if amended into independent form.

The Examiner has not explained or withdrawn his obviousness rejections over Smyers (US 6,460,717). As Applicant indicated previously, pursuant to Section 103(c), the subject matter in the Smyers patent and the claimed invention were, at the time the present invention was made, owned by the same entity and were subject to an obligation of assignment to the same entity. This is further evidenced by the assignments of record of the Smyers patent and the present application to the current assignee. Therefore, the rejections of claims 8-17 and the finality of the last office action should immediately be withdrawn.

Objections

reconsider, No

The Examiner has objected to the drawings stating that the drawings do not show that "the second portion of the peripheral edge of the bottom panel proximate the first portion includes a raised flange that overlies the outer face of the one side panel when the one side panel is pivoted to the raised position as stated in claims 9, 12 and 22." The Examiner has also objected to claims 9, 12, 22 and 24 for the same reason. Applicant appreciates the Examiner's clarification that "the flange 74 lies adjacent to and in front of the outer face of the side panel rather than above or over." Applicant respectfully disagrees with this assertion. The term "overlies" is clearly defined in the specification on page 12, lines 7-10, which states:

[O]ther portions 72 of the peripheral edge of the base 12, for example, proximate to the midpoint of each side wall 18, include a raised flange 74 that overlies the side wall's outer face 34 when the side wall 18 is pivoted to the raised position.

The flange 74 is also shown overlying the outer face of the side panel in Figure 1. Therefore, this objection should be withdrawn.

§112 Rejections

No change of scope

The Examiner has rejected claim 7 as being indefinite for lack of antecedent basis with respect to the term "the lateral edge." Although Applicant believes the claim to be clear, Applicant has amended claim 7 to correct this minor antecedent basis issue.

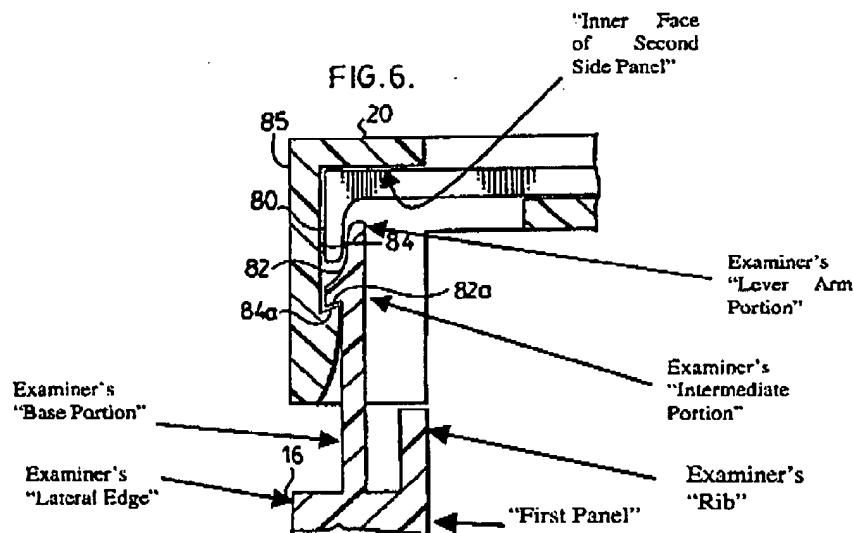
Serial No. 10/027,741
Attorney Docket No. RPC 0579 PUS

Merrey

The Examiner has rejected claims 1-3 and 28-33 as anticipated by Merrey. The Examiner is calling the surface inward of the latch (near numeral 16 below) the "lateral edge" in Merrey. This is incorrect. Referring to Figure 8 of Merrey, the "lateral edge" of the side wall in Merrey is clearly the outer tip of the catch 82. Properly interpreted, in Merrey, the lever arm extends from a "base portion" that is substantially inward of the lateral edge of the side panel. The lever arm in Merrey also extends from the base portion toward the lateral edge. Therefore, claim 1 is not anticipated by Merrey.

The Examiner has rejected claim 3 as anticipated by Merrey even though the Examiner correctly indicates at page 4 of the final rejection that Merrey does *not* include the rib claimed in claim 3. Therefore, claim 3 is not anticipated by Merrey. The "rib" that the Examiner references in Figure 6 of Merrey is not perpendicular to the pivot axis of the side wall.

Using the Examiner's application of the claim language to Merrey as shown below (including the Examiner's characterization that a "lever arm" extends away from a "lateral edge" toward a "base portion"), Merrey could not possibly meet the terms of claims 29-33.



Dependent claim 29 recites that the base portion is at least substantially between the lever arm portion and the inner face of the second side panel. As shown above, what the Examiner calls the "base portion" is not anywhere near the area between what the Examiner calls the "lever

Serial No. 10/027,741
Attorney Docket No. RPC 0579 PUS

arm portion" and the inner face of the second side panel. Therefore, claim 29 is not anticipated by Merey.

Dependent claim 30 recites an arcuate leg between the lateral edge and the intermediate portion. As is clear from Figure 6 above, there is no arcuate leg between what the Examiner calls the "lateral edge" and what the Examiner calls the "intermediate portion." Claim 30 is not anticipated by Merey.

Dependent claim 31 recites that the intermediate portion travels substantially in a plane parallel to the outer face of the first side panel when the latch member is deflected to engage or disengage the latch member. As can be seen in Figure 6 above, the intermediate portion would travel substantially perpendicularly to the outer face of the first side panel. Therefore, claim 31 is not anticipated by Merey.

Dependent claim 32 recites that the intermediate portion extends toward a lateral center of the first panel as it extends away from the base portion. As can be seen in Figure 6 above, what the Examiner calls the "intermediate portion" in Merey is outward of both the Examiner's "base portion" and the lateral center of the first panel. Therefore, claim 32 is not anticipated by Merey.

Dependent claim 33 recites that the intermediate portion is between the base portion and a lateral center of the first panel. Clearly, in Merey what the Examiner calls the "intermediate portion" is not between the Examiner's "base portion" and the lateral center. Claim 33 is not anticipated by Merey.

Smyers and Foy

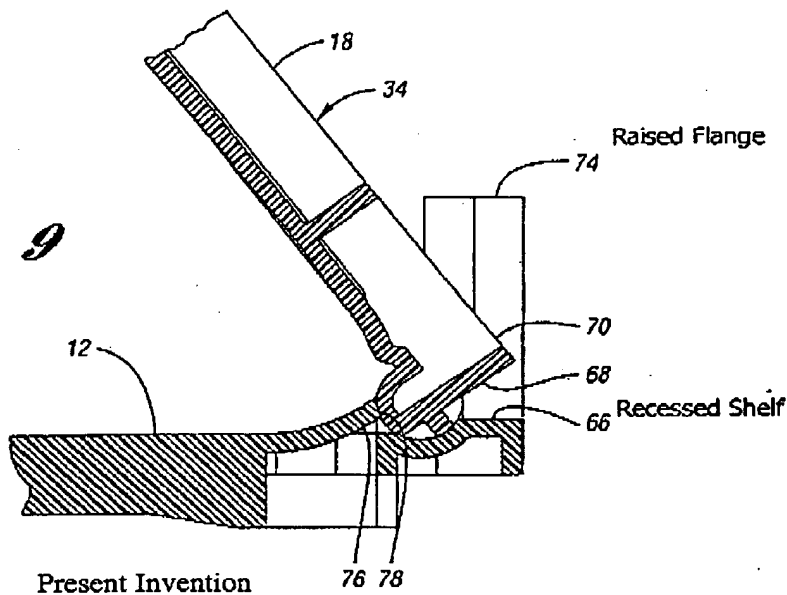
The Examiner has rejected claims 11-13, 20-23 and 27 as anticipated by Smyers (U.S. 6,460,717) and Foy (U.S. 4,923,079).

The Examiner states that these claims are "clearly anticipated" by Foy, yet the Office Action mailed October 7, 2002 admitted that Foy '079 does not disclose the claimed "abutting surface."

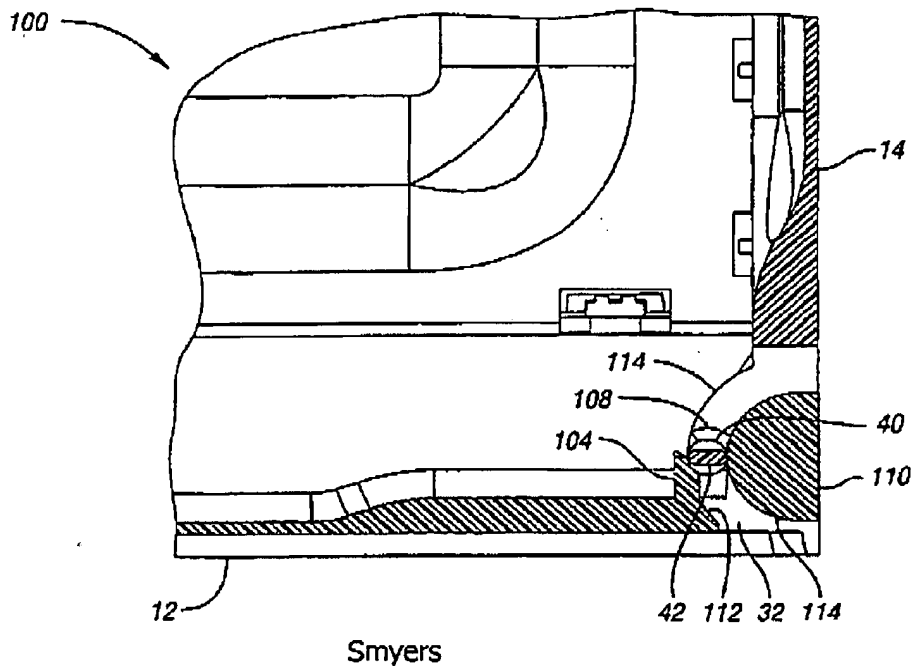
Smyers and Foy do not disclose a recessed shelf that is below a pivot axis of the wall. For comparison, Figure 9 from the present application is reproduced below. As can be seen, the recessed shelf is below the pivot axis of the side wall.

Serial No. 10/027,741
Attorney Docket No. RPC 0579 PUS

Fig. 9

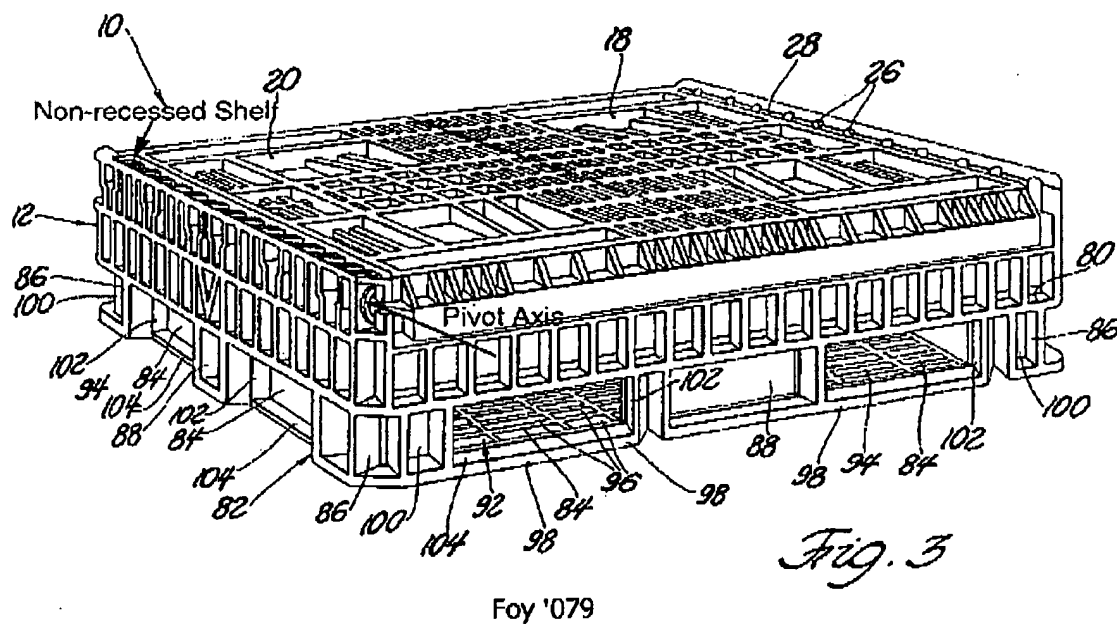
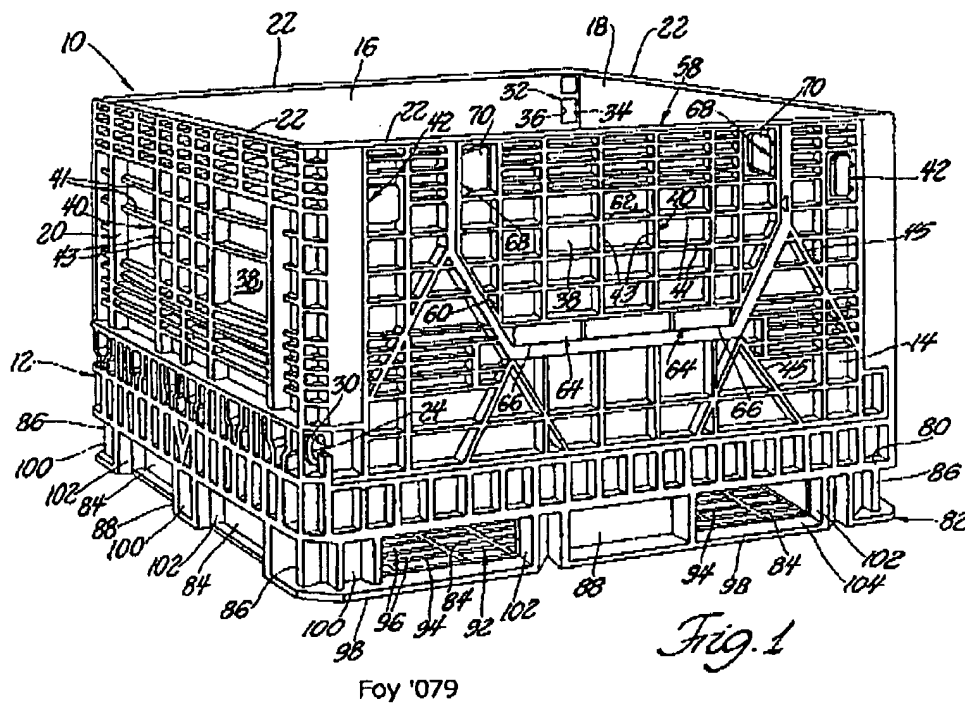


In contrast, there is no recessed shelf in Smyers, which is reproduced below.



Serial No. 10/027,741
Attorney Docket No. RPC 0579 PUS

Nor is there a recessed shelf below the pivot axis in Foy '079. Figures 1 and 3 from Foy '079 are reproduced below. As shown the shelf is not recessed and is not below the pivot axis.



Serial No. 10/027,741
Attorney Docket No. RPC 0579 PUS

Therefore, claim 11 is not anticipated by Smyers or Foy '079.

Claim 20 recites a stop member having a surface that engages the inwardly-facing abutting surface of the side panel when the side panel is pivoted to the raised position, where the abutting surface is proximate the basal edge of the side panel. The Examiner has not indicated where he finds the stop member in the Smyers and Foy. The stationary member 22 in Smyers does not abut a surface proximate the basal edge of the side panel. Foy does not disclose the abutting surface, as the previous rejection admitted.

Whatever the Examiner is calling the "stop members" in Smyers and Foy, they do not include "cantilevered portions" with the complementary surface defined on a free end of the cantilevered portion, as required by claim 21. Therefore, claim 21 is independently patentable.

Luburic

The Examiner has rejected claims 20-23 as anticipated by Luburic (U.S. 5,938,059). The Examiner has further specified that "the pivot pin [64 of Luburic] includes an inwardly-facing abutting surface" in his rejection of claim 20. However, the pivot pin 64 of Luburic does not include "an inwardly facing abutting surface of the side panel," as claimed by claim 20. Even more clearly, it is unreasonable for the Examiner to call the pivot pin 64 of Luburic part of the claimed "side panel." Therefore, Luburic does not anticipate claim 20.

Mercy in view of Foy '079

The Examiner has rejected claims 3 and 4 as obvious over Mercy in view of Foy '079. Contrary to the Examiner's §102 rejection above, the Examiner admits that Mercy does not disclose the rib as claimed, but states that "it would have been obvious to add the rib at a location such that the rib is received on the inside corner of an adjacent panel in order to provide a rib-corner structure which adds stability..." However, neither Mercy nor Foy suggest adding a rib-corner structure in order to add stability. Therefore, there is no motivation for making the proposed modification to Mercy. Additionally, referring to Figure 6 of Mercy, a rib could not be added to the latch on the first side panel to be received on the inside corner of the second side panel 20 without the rib interfering with the release mechanism (flange 80). At the same time, the release mechanism (flange 80) would prevent the rib from contacting the corner, so there would be no gain in stability. Therefore, it would not be obvious to add the rib to Mercy and claims 3 and 4 are not obvious.

Serial No. 10/027,741
Attorney Docket No. RPC 0579 PUS

Merrey in view of Yamauchi

The Examiner has rejected claim 7 as obvious over Merrey in view of Yamauchi (EP 1114779-A2). Claim 7 specifies at least one locating member projecting outwardly from the outer face of the first side panel and that the flange includes at least one socket adapted to receive at least one locating member. If such a locating member were added to what the Examiner calls the outer face of the first side panel 16 in Merrey, the side panels 16-20 would not be able to be assembled or disassembled. In Merrey, the first side panel 16 is first pivoted to the upright position. The second side panel 20 is then pivoted to the upright position, with the catch 82 deflecting inwardly until it passes edge 84a, where it is retained. Thus, a locating member projecting outwardly from the outer face of the first side panel 16 would not be able to be inserted into a socket on the flange of the second panel. Therefore, it would not be obvious to make this modification and claim 7 is independently patentable.

Merrey and Smyers

The Examiner has rejected claims 8-10 as obvious over Merrey in view of Smyers. Smyers is a prior art reference to the present application under Section 102(e). Pursuant to Section 103(c), the subject matter in the Smyers patent and the claimed invention were, at the time the invention was made, owned by the same entity and were subject to an obligation of assignment to the same entity. This is further evidenced by the assignments of record of the Smyers patent and the present application to the current assignee. The Examiner has neither withdrawn this rejection nor responded to Applicant's pointing out this defect in the Examiner's rejection. Therefore, pursuant to 103(c), this obviousness rejection should be withdrawn and claims 8-10 should be allowed.

Smyers and Yamauchi

The Examiner has rejected claim 14 as unpatentable over Smyers in view of Yamauchi. For the reasons stated above, this rejection should be withdrawn under Section 103(c).

Smyers and Yamauchi and Merrey

The Examiner has rejected claims 15-17 as being obvious over Smyers in view of Yamauchi and further in view of Merrey. For the reasons stated above, this rejection should be withdrawn pursuant to Section 103(c).

Serial No. 10/027,741
Attorney Docket No. RPC 0579 PUS

CONCLUSION

It is believed that no fees are due. If any additional fees or extensions are due, please charge all fees to deposit account no. 50-1984.

Respectfully submitted,



Konstantine J. Diamond
Registration No. 39,657
4010 East 26th Street
Los Angeles, California 90023
Telephone: (323) 262-5145
Facsimile: (323) 269-8506

Dated: Dec. 23, 2003